

Date Signed: April 20, 1990

MEMORANDUM

SUBJECT: Change in the PWSS Program's Definition of Timely
and Appropriate Actions

FROM: Michael B. Cook, Director (signed by Michael B. Cook)
Office of Drinking Water

TO: Water Management Division Directors
Regions I - X

The purpose of this memorandum is to advise you of a modification in the PWSS program's definition of "timely" in the "timely and appropriate" guidance. This modification will be effective in FY 1991, as was noted in the FY 1991 "Guide to the Office of Water Accountability System and Regional Evaluations."

I. Background/Proposed Change

The current "timely and appropriate" guidance states that for an action against a significant noncomplier (SNC) to be considered timely it must be taken within six months of the discovery of the SNC for microbiological/turbidity/TTHM SNCs and within twelve months of the discovery of the SNC for chemical/radiological SNCs.

In February, my staff proposed a change to the "timeliness" portion of the "timely and appropriate" guidance to state that an action against any SNC would be considered timely if it occurs within six months of the discovery of that SNC.

This change does not imply that all SNCs can be resolved, that is, returned to physical compliance, within this timeframe. I recognize that compliance with the chemical/radiological requirements often takes longer than compliance with other requirements. I do believe, however, that we can take the appropriate enforcement action to address these systems within six months.

This approach has several advantages. First, it simplifies our guidance and, as a result, our reporting requirements. All SNCs will now be subject to the same timelines. Regional reporting to headquarters will be simplified as will the ODW's annual report to the Agency on the implementation of the timely and appropriate enforcement response criteria.

Secondly, with the change in the definition of SNC, there are no longer two categories of SNC, but several. Setting out different timeliness criteria for several types of SNCs does not appear to be feasible and it would unnecessarily complicate tracking and reporting, as well as explaining our policy to those outside ODW.

Thirdly, changes in the Operating Guidance and in our capacity to generate the chemical/radiological SNC lists seem to make this approach a logical one. The FY 1991 Operating Guidance requires the Regions to provide quarterly reports on all SNCs. Secondly, FRDS 2.0 has the capacity to generate the chemical/radiological SNC list each quarter. In previous years, we were able to pull the chemical/radiological SNC list only once per year and the Regions were required to report follow-up actions on these only once per year. With those constraints, the difference in the "timeliness" criteria for resolving microbiological/turbidity SNCs and chemical/radiological SNCs made sense. However, since these constraints no longer exist, putting all SNCs on the same time schedule seems to be the logical way to proceed.

Please note that no change in the definition of an "appropriate" action is being proposed at this time.

II. Comments on the Proposed Change

My staff proposed this change in a memorandum to the Drinking Water/Groundwater Protection Branch Chiefs (February 23, 1990). We received comments from all of the Regions. A summary of the comments received is contained in Attachment 1.

This change was discussed at the Branch Chiefs' meeting in Seattle in March and all the Regions that attended agreed that ODW should implement the change in FY 1991 along with the revised definition of SNC.

III. Implementation of the New "Timeliness" Definition

The revised definition for "timeliness," that is, "in order for an appropriate action against a SNC to be considered timely, it must have been taken within six months of the discovery of that SNC" will be effective in FY 1991. We will apply the criteria beginning with the list of new SNCs which will be generated in October 1990. The time for "appropriate action" on these new SNCs will expire in March 1991. Regions will report follow-up on SNCs in the same manner as they are currently on the STARS quarterly reports. The only difference will be that the quarterly reports will contain all SNCs (not just microbiological and turbidity SNCs).

Should you have any questions on this, please contact me or have your staff contact Betsy Devlin at (202) 564-2245.

Attachment

cc: Drinking Water/Groundwater Protection Branch Chiefs
PWSS Enforcement Coordinators
Kathy Summerlee

<u>Region</u>	<u>Comments</u>	<u>Response</u>
I	Concur with change. No other comments.	None needed.
II	Concur with change. The one drawback is that it will give less time to address the large number of systems which will become SNCs due to the SNC redefinition.	It is true that we anticipate an increase in the number of SNCs due to the SNC redefinition. However, the increase should be seen mainly in the microbiological and turbidity SNCs where the time for taking action was already six months. Thus, the change in "timeliness" does not give us less time to address these SNCs.
III	Concur. No other comments.	None needed.
IV	Concur. No other comments.	None needed.
V	Concur. We must note two ramifications of this change: (1) States will in many cases be forced to finalize a formal enforcement action before an engineering study has been completed. This may make it necessary for States to be willing to revise final compliance dates and interim milestones in their orders. This should be acknowledged in guidance; (2) We will most likely have a higher percentage of exceptions, especially in complex cases which involve hearings and community responses.	Agree with Region V's comments; no change needed in "timeliness" criteria.

<u>Region</u>	<u>Comments</u>	<u>Response</u>
VI	Agree with the change for chemical/radiological monitoring and reporting SNCs; however, for chemical and radiological MCL SNCs, believe the time period is too short. A system becomes an SNC when it receives the results of a chemical analysis showing concentrations above the URTH level. Six months is too short for a system to install treatment and return to compliance and changing the "timeliness" criteria to six months will force States to put even cooperative systems on formal compliance schedules when it is not necessary.	We are aware of your concerns; they are similar to those raised by Region V; however, the timeframe allowed is for EPA or the States to take action -- not for the system to return to compliance. We believe that action can be taken in most cases in the six months allowed.
VII	Concur with the change.	
VIII	Concur with the change. No other comments.	No response needed.
IX	Concur with the change. No other comments.	No response needed.
X	Concur with the change. Make all changes (i.e., SNC redefinition, change in "timeliness," and the escalation guidelines) at one time.	Agree with Region X's comment.